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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment)
Payment Financing for Personal)
Communications Services (PCS))
Licensees)

To: The Commission

PETITION FOR RECONSIDERATION

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, submits this Petition for Reconsideration of the captioned Second Report and Order, FCC 97-342, released by the Commission on October 16, 1997. The Commission's summary of the Second Report and Order was published in the Federal Register on October 24, 1997.¹

I. INTRODUCTION

CIRI has long been an active supporter of responsibly managed government efforts to encourage minority and small business participation in the communications industry. CIRI participated in the Commission's broadband personal communications service ("PCS") C block auction, C block reauction, and D, E, and F block auction, winning fourteen C block licenses and seven F block licenses. CIRI completed and activated the first major market broadband PCS C block system in

¹ See 62 Fed. Reg. 55,348 (1997).

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Tulsa, Oklahoma, in June, 1997, and CIRI continues to develop its broadband PCS systems in other markets.

CIRI now urges the Commission to reinstate and apply its original rules regarding installment payment default and delinquency. The Commission's rules were designed to address the difficulties smaller businesses would face in competing for and operating broadband PCS systems; that a handful of larger entities placed irresponsible bids does not diminish the fairness of those provisions. The Commission worked quite hard in this proceeding to give all interested parties a fair hearing, and the record that resulted supports the enforcement of the Commission's well-founded installment payment rules. CIRI also urges the Commission to pursue cross default remedies against C block licensees who default on installment payments. These bidders should not be permitted to use the Commission's payment rules as a money management system while collecting new licenses. With these steps, the Commission will confirm the integrity and predictability of its competitive bidding rules.

II. THE COMMISSION SHOULD REINSTATE AND APPLY ITS EXISTING RULES REGARDING INSTALLMENT PAYMENT DELINQUENCY AND DEFAULT

First, CIRI urges the Commission to reinstate and apply its existing competitive bidding rules regarding installment payment delinquency and default. Time and again, the Commission has ruled that adherence to its spectrum auction rules must take priority over the specific financing problems of auction

participants.² With careful pronouncements to that effect before, during, and after the broadband PCS C block auction, the Commission established the terms of the deal to be entered by C block auction bidders.

Now, however, the Commission has adopted three alternatives to its competitive bidding rules pursuant to which licensees may avoid their C block license payment obligations. Underpinning these alternatives is the Commission's finding that C block licensees faced financial troubles because:

a handful of large bidders bid extremely high prices per pop for major markets, even adjusted for the value of the government financing we provide. The aggregate results of the C block auction, when measured in average price per pop paid, are markedly higher than the other PCS bands, even after adjusting for financing, and even though many individual small licensees bid prices comparable to those paid for the A and B block licenses.³

Against this background, and after considering the filings by the various parties in this proceeding, the Commission "conclude[d] that the options presented in this Second Report and Order offer

². See, e.g., Comments of Cook Inlet Region, Inc., Cook Inlet Western Wireless PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc., WT Docket No. 97-82, at 4-13 (filed June 23, 1997).

³. Second Report and Order at ¶ 10. Even then-Chairman Hundt concluded in his separate statement that:

a handful of bidders submitted bids that cannot be explained other than by assuming they made their decisions according to erroneous market predictions, bad financial advice, or a triumph of hope over thought.

WT Docket No. 97-82, Affirming and Dissenting Separate Statement of Chairman Reed E. Hundt re: C Block Financing Issues at 2 (Sept. 25, 1997).

the most appropriate and fair method of resolving C and F block financial concerns."⁴

If the "financial concerns" of some C and F block licensees is a function of placing bids at "extremely high prices," however, the Commission should not hesitate to apply its installment payment rules. The Commission adopted those installment payment rules in 1994 in anticipation of "the enormous costs of broadband PCS"⁵ and the probability that "[i]t will be extremely challenging for any entrepreneurs' block participant to compete"⁶ As recently as May, the Commission concluded that the C block payment rules "give adequate latitude to businesses that require extra time to meet their obligations to the Commission and the government."⁷ The Commission's existing payment rules are well-justified, and they are designed to help responsible bidders to attract capital for broadband PCS system construction and operation. That some overextended bidders are not benefitting from these rules is not the fault of the Commission.

⁴. Id. at ¶ 17.

⁵. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5592 (1994).

⁶. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 459 (1994).

⁷. Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, FCC 97-164, ¶ 151 (rel. May 8, 1997) (footnote omitted).

For this reason — and for the reasons set forth in its Comments and Reply Comments in this matter — CIRI urges the Commission to reinstate its original C block installment payment rules. Notably, the "handful of large bidders" at the root of this matter first assured the Commission that the simple deferment of payment obligations for one year would secure their ability to obtain financing,⁸ only to substitute much more dramatic demands for relief once the Commission stayed their March, 1997, payment due date.⁹ If the Commission reinstates C block installment payment obligations as of March 31, 1998, these overextended bidders will have received the very one-year deferment for which they so forcefully argued. If there was any truth to their arguments, these bidders should be grateful for the accommodation of a full year without payments. At the expiration of that year, however, the Commission's existing installment payment rules should be enforced.

⁸. Letter from Thomas Gutierrez, Esq., et al. to Michele C. Farquhar, Chief, Wireless Telecommunications Bureau (Mar. 13, 1997) ("Gutierrez Letter"). According to the moving parties, "modification of the installment plan to provide for annual payments will provide small businesses with greater flexibility to time their fund raising activities around favorable market conditions or when competition for funding is less congested." Id. at 3.

⁹. See, e.g., Comments of NextWave Telecom, Inc., at 9 (filed June 23, 1997); Comments of Pocket Communications, Inc., Debtor-in-Possession, at 3 (filed June 23, 1997); Petition for Waiver and Comments of R & S PCS, Inc., at 21-22 (filed June 23, 1997).

III. THE COMMISSION SHOULD PURSUE CROSS DEFAULT REMEDIES AGAINST C BLOCK LICENSEES WHO DEFAULT ON INSTALLMENT PAYMENTS

CIRI also urges the Commission to reconsider its decision not to cross default its installment payment plan loans with other installment payment plan loans to the same licensee.¹⁰ Without a cross default policy, the Commission will permit a licensee to select the licenses and markets on which it defaults, effectively rewarding the licensee with the ability to "save" only the licenses that it wishes to retain. The Commission should sanction neither bid speculation during an auction nor license "cherry-picking" thereafter, yet these would be the effects of maintaining a selective default policy.

Indeed, without a cross default policy, a bidder that acquires a market that it does not truly desire simply may default on its payment obligations for that market while retaining the markets that it values more highly. With a cross default provision, that same bidder might approach bidding with more circumspection, in the process leaving a given market for a bidder that desires to provide service in the area. The Commission would be saved the expense of administering the default and relicensing of the area, and service may well be provided more quickly in the given market. The Commission could waive the cross default policy in circumstances in which the public interest would be served, but bidders should not expect that default exists as a strategic bidding mechanism.

¹⁰. Second Report and Order at ¶ 79.

This is particularly true in the case of broadband PCS F block licensees. Some of the overextended bidders who asked to be relieved of their C block payment obligations complained that delays in the licensing process limited their ability to obtain financing. For example, NextWave Telecom, Inc. ("NextWave") has argued that:

The public equity market for wireless telecommunications was very strong throughout 1995 and through the first half of 1996, only to erode in late 1996 and in 1997.¹¹

Moreover, according to NextWave:

Since the close of the [C block] auction, virtually all that could have gone wrong in spectrum financing markets, particularly for high risk new entrants, has gone wrong.¹²

Yet, during the same period in which financing allegedly had become scarce, NextWave voluntarily entered net high bids totalling \$128,971,750 for F block licenses¹³ and accepted government financing on the balance due. Those F block licenses had not even been granted when NextWave asked the Commission to postpone the repayment of its C block debts.¹⁴ NextWave even appealed to Congress to help it avoid its C block payment obligations, though the Senate Commerce Committee declined to provide any new relief.

¹¹. Comments of NextWave Telecom, Inc., WT Docket No. 97-82, at 12 (June 23, 1997).

¹². Reply Comments of NextWave Telecom, Inc., WT Docket No. 97-82, at 9 (July 8, 1997).

¹³. See Public Notice: D, E, and F Block Auction Closes, DA 97-81, Attachment B (rel. Jan. 15, 1997).

¹⁴. See Gutierrez Letter.

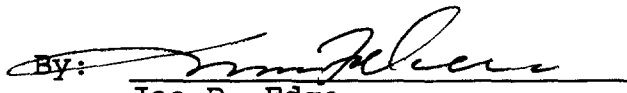
If the Commission had a cross default policy in effect, however, licensees preparing to ask for C block relief may not have bid for (and tied up) F block licenses. Overextended C block bidders would not have used the Commission's independent payment rules to acquire new licenses for which they could not pay, and a wider group of F block auction participants would have had a chance to become Commission licensees. Instead, the Commission will issue new loans to some F block licensees at the same time it implements a plan to relieve them of their C block payment obligations. In the absence of a cross default policy, these bidders will be able to enjoy the benefits of their bidding choices without having to face the burdens they do not want. To avoid this, CIRI urges the Commission to establish that a licensee that defaults on its payments for one or more C or F block licenses will be declared in default on its debt associated with other C or F block licenses.

IV. CONCLUSION

For these reasons, CIRI urges the Commission to reinstate its original broadband PCS C block installment payment rules and to pursue cross default remedies against licensees who default on competitive bidding payment obligations.

Respectfully submitted,

COOK INLET REGION, INC.

By: 
Joe D. Edge
Mark F. Dever
DRINKER BIDDLE & REATH LLP
901 Fifteenth Street, N.W.
Suite 900
Washington, DC 20005
(202) 842-8800

Its Attorneys

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